Lee Heng Chuan & Ors v Datuk Bandar Kuala Lumpur & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2-25-125 OF 1997

AZMEL J

9 DECEMBER 1998

Civil Procedure *— Locus standi to bring action — Application to quash development order — Whether lawful tenants of controlled premises an interested party — Control of Rent Act 1966*

Landlord and Tenant *— Controlled premises — Recovery of possession — Development — Development order granted in respect of controlled premises — Application for extension of development order — Application made after expiry of development order — Order made for recovery of premises —Whether decision to grant order for recovery should be quashed — Whether conditions for development order complied with — Whether valid planning permission granted — Federal Territory (Planning) Act 1982 s 24 — Control of Rent Act 1966 s 19*

The second and third respondents are the registered owners ('the owners') of a controlled premises under the Control of Rent Act 1966 ('the Act'). The applicants are tenants of the premises ('the tenants'), operating various business activities therein. The owners desired recovery of the premises for commercial building and applied for, and obtained in 1994, a development order in respect of the controlled premises from the first respondent. The development order was valid for 12 months, up to 14 February 1995. After the expiry of the order, the owners, in July 1996, made an application for and successfully obtained an extension of the same till 14 February 1997. On 3 February 1997, the owners applied again for an extension and had the validity period of the development order extended to 14 February 1998. The owners subsequently made an application to the first respondent for the recovery of the controlled premises for the purposes of development under s 19 of the Act. At the inquiry, the tenants challenged the application on the ground that the development order was invalid in that an extension of the same was granted upon an application made after its expiry contrary to s 24 of the Federal Territory (Planning) Act 1982. They argued that one of the conditions under s 19(1)(a) of the Act, requiring a valid planning permission, in this case in the form of a development order, to accompany an application for recovery, was not satisfied. Rejecting the argument, the first respondent made an order for recovery of the controlled premises. The tenants applied to the High Court for an order of certiorari to quash the decision. The owners however contended, as a preliminary issue, that the tenants lack the locus to bring the action in that the issue of the invalidity of the development order concerned only the owners and first respondent.

Held, allowing the tenants' application:

(1) In the case of recovery of controlled premises for the purposes of development involving building operation, an extension of the requisite development order ought to have been applied for before its expiry. The first repondent has no discretion to grant an extension of the order upon an application made after its expiry; an extension granted in such a situation is unlawful (see p 79A, F–H).

(2) The development order which accompanied the application for recovery of premises was not a valid planning permission because its extension was unlawful. Hence, the order of the first respondent granting the owners possession of the controlled premises was unlawful (see p 80A).

(3) The tenants have locus standi to bring the action to quash the decision of the first respondent because they were interested parties, being lawful tenants of the controlled premises about to be dispossessed. They have the locus to challenge an unlawful dispossession (see p 80C–E).

[Bahasa Malaysia summary

Responden kedua dan ketiga merupakan pemunya-pemunya berdaftar premis terkawal ('pemunya-pemunya') di bawah Akta Kawalan Sewa 1966 ('Akta tersebut'). Pemohon-pemohon merupakan penyewa-penyewa premis tersebut ('penyewa-penyewa'), yang menjalankan pelbagai aktiviti-aktiviti perniagaan di situ. Pemunya-pemunya tersebut ingin mengambil kembali premis tersebut untuk tujuan pembangunan komersil dan memohon, dan memperolehi dalam tahun 1994, suatu perintah pembangunan berkaitan dengan premis terkawal tersebut dari responden pertama. Perintah pembangunan tersebut adalah sah untuk 12 bulan, sehingga 14 Februari 1995. Selepas tamat tempoh sah perintah tersebut, pemunya-pemunya, dalam bulan Julai 1996, telah membuat suatu permohonan dan berjaya memperolehi perlanjutan perintah itu sehingga 14 Februari 1997. Pada 3 Februari 1997, pemunya-pemunya telah memohon perlanjutan sekali lagi dan memperolehi perlanjutan tempoh sah perintah pembangunan tersebut sehingga 14 Februari 1998. Pemunya-pemunya selepas itu telah membuat permohonan kepada responden pertama untuk mengambil kembali premis terkawal tersebut untuk tujuan pembangunan di bawah s 19 Akta tersebut. Dalam siasatan yang diadakan, penyewa-penyewa membantah permohonan tersebut atas alasan yang perintah pembangunan tersebut adalah taksah kerana perlanjutan (yang pertama) telah diberi atas permohonan yang dibuat selepas tamat tempoh sahnya bertentangan dengan s 24 Akta (Perancangan) Wilayah Persekutuan 1982. Mereka berhujah bahawa satu daripada syarat-syarat di bawah s 19(1)(a) Akta tersebut, yang memerlukan kebenaran perancangan, dalam bentuk perintah pembangunan dalam

kes ini, untuk megiringi permohonan pengambilkembalian, adalah tidak dipenuhi. Menolak hujahan tersebut, responden pertama telah membuat perintah pengambilkembalian premis terkawal tersebut. Penyewa-penyewa memohon kepada Mahkamah Tinggi untuk perintah certiorari untuk membatalkan keputusan tersebut. Pemunya-pemunya telah menghujah, sebagai bantahan permulaan, bahawa penyewa-penyewa tidak mempunyai locus untuk mengambil tindakan tersebut oleh kerana isu ketidaksahan perintah pembangunan hanya mengaitkan pemunya-pemunya dan responden pertama.

Diputuskan, membenarkan permohonan penyewa-penyewa:

(1) Dalam kes pengembalian premis terkawal untuk tujuan pembangunan yang mengaitkan operasi pembangunan, perlanjutan perintah pembangunan yang perlu mestilah dibuat sebelum tamatnya tempoh sah perintah tersebut. Responden pertama tidak mempunyai budibicara untuk memberi perlanjutan atas permohonan yang dibuat selepas tempoh sahnya telah tamat; perlanjutan yang diberi dalam situasi ini adalah taksah di sisi undang-undang (lihat ms 79A, F–H).

(2) Perintah pembangunan yang mengiringi permohonan pengambilkembalian premis tersebut adalah suatu kebenaran perancangan yang taksah oleh kerana perlanjutan tempoh sahnya adalah taksah (lihat ms 80A).

(3) Penyewa-penyewa mempunyai locus standi untuk membawa tindakan untuk membatalkan keputusan responden pertama kerana mereka merupakan pihak yang berkepentingan. Ini disebabkan oleh mereka adalah penyewa-penyewa sah di sisi undang-undang premis terkawal milikan yang mana akan diambil dari mereka. Mereka mempunyai locus untuk mencabar pengambilan milikan dari mereka yang taksah di sisi undang-undang (lihat ms 80C–F).]

Notes

For cases on recovery of possession of controlled premises generally, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 276–644.

For cases on locus standi generally, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3088–31118.

Legislation referred to

Control of Rent Act 1966 s 19, (1), (a)

Federal Territory (Planning) Act 1982 ss 22, 24, (1), (2)

R Sivarasa (*Anni Santiago* with him) (*Daim & Gamany*) for the applicants.

B Thangaraj (*Thangaraj & Associates*) for the first respondent.

Augustine Poh (*Edmund Sia* with him) (*Cheong Kee Fong & Co*) for the second and third respondents.

Cur Adv Vult

Azmel J: The seven applicants in this case applied by way of an originating motion for an order of certiorari to quash the decision of Dato' Bandar Kuala Lumpur ('the first respondent') made under s 19 of the Control of Rent Act 1966 dated 26 August 1997.

The brief facts of the case are as follows. The applicants were the tenants of the rent controlled premises known as No 40, Jalan Petaling, Lot 1 Seksyen 23, No 27, Jalan Hang Lekir, Kuala Lumpur Lot 65 Seksyen 23 and also No 15, Jalan Hang Lekir Lot 71 Seksyen 23 ('the said controlled premises'). They had been occupying the said controlled premises for periods ranging between 7 to 30 years and were operating in various business activities in the said controlled premises.

The applicants had been issued with notices from Dewan Bandaraya Kuala Lumpur that Cheong Kee Fong and Cheong Kee Soon in their capacity as trustees of the estate of Cheong Yoke Choy ('the deceased') (the second respondent) and Cheong Wing Chan Sdn Bhd ('the third respondent') as registered owners of the said controlled premises had made an application for recovery of possession of the said controlled premises for purposes of development under s 19 of the Control of Rent Act 1966 and in view of that an inquiry was to be held on 26 August 1997 for the purpose of issuing the order and offer of compensation to the affected tenants.

The applicants had attended the Inquiry together with their counsel. At the Inquiry the applicants through their counsel objected to the application by the second and third respondents for the recovery of the said premises on the ground that the application did not comply with the requirements of s 19(1) of the Control of Rent Act 1966. Section 19(1) of the Control of Rent Act 1966 reads as follows:

> (1) The landlord of any controlled premises within the areas of the City of Kuala Lumpur who desires to effect or cause to be effected thereto any development may apply for the recovery of the possession thereof to the Commissioner, and every such application shall be accompanied by —
>
> (a) a planning permission which has been granted by the Federal Capital Planning Authority constituted under the law relating to planning for the City of Kuala Lumpur;
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> (b) evidence that funds are or will be available for the purpose of putting into effect such development;
>
> (c) a written undertaking by the landlord that work for the purpose of putting into effect such development will commence within six months of the date when possession of the premises shall have been obtained or within such further period as the Commissioner may determine in any particular case.

It was not in dispute that on 14 February 1994 Pengarah Jabatan Perancang dan Kawalan Bangunan, Dewan Bandaraya Kuala Lumpur in accordance with s 22 of the Federal Territory (Planning) Act 1982 issued a development order in respect of the said controlled premises for its development. In accordance with s 22 of the said Act this development order was only valid for a period of 12 months, ie up to 14 February 1995.

However, on 10 July 1996 the second and third respondents applied for an extension of the said development order to the first respondent. That application of extension was granted by the first respondent at its meeting on 3 September 1996 and the validity period of the development order was extended till 14 February 1997.

Subsequently on 3 February 1997, the second and third respondents made another application for extension of the development order and the first respondent granted the application for extension of the development order which made the validity period extended to 14 February 1998.

The provision concerning the powers of the first respondent to extend a development order is contained in s 24 of the Federal Territory (Planning) Act 1982. It reads as follows:

> Lapse of development order
>
> (1) A development order issued under this Act shall unless otherwise extended be valid for twelve months from the date of the issue of the order within which time the development shall commence in the manner specified in such order or the building plans in respect of the development shall be submitted in accordance with any law relating to the erection of buildings:
>
> Provided that this subsection shall not apply in respect of a development order which is expressly mentioned therein that the planning permission granted does not involve any building operation.
>
> (2) On an application being made in that behalf in the prescribed manner before the expiry of the period referred to in subsection (1) the Commissioner may on the payment of the prescribed fee by the applicant grant such extension or extensions to a development order as the Commissioner may deem fit.
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> (3) In granting an extension or further extension of a development order under subsection (2), the Commissioner may impose such conditions on the development order as he thinks fit or vary the conditions originally imposed; and section 23 shall apply with necessary modifications to the imposition or variation of conditions under this section as applies to the imposition of conditions under subsection (2) section 22.

The only main issue that needs to be determined in this case is whether the first respondent in making the order under s 19 of the Control of Rent Act 1966, ie for the recovery of possession of controlled premises by the owners for purposes of development, the three conditions under sub-s (1) of s 19 of the said Act had been complied with. It was alleged by the applicants that the requirement under para (a) of s 19(1) had not been satisfied; that is, the need to have a valid planning permission.

Such planning permission in the form of a development order is governed by the Federal Territory (Planning) Act 1982. A development order may be issued by Dewan Bandaraya Kuala Lumpur on an application under s 22 of the said Act. However, in accordance with s 24(1) of the said Act such development order shall only be valid for a period of twelve months within which period development on the premises must commence.

A However, if development has not commenced the development order may be extended as provided in s 24(2) which allows an application for extension to be made. But such application must be made before the expiry of the said development order. Section 24(1) of the Act provides for an exception in cases where the planning permission sought does not involve any building operation and in such a case the requirement under s 24(1) shall not apply. However, in respect of the second respondent and the third respondent's application having regard to the topic of the development order issued by the first respondent dated 14 February 1994 which says:

> *Untuk cadangan pembangunan 2 blok 5 tingkat kedai/Pejabat dengan tingkat basemen* di atas Lot 1-4-65-71 Seksyen 23, Jalan Petaling/Jalan Cecil/Jalan Sultan dalam Bandaraya Kuala Lumpur. (Emphasis added.)

I have no doubt whatsoever that this application involve a building operation and as such s 24(1) of the said Act would apply.

It is trite law that creatures of statutes do not have unlimited authority. Their authorities are derived substantially and procedurally from the statutes that create them. It means that statutory authorities can only exercise their powers that are spelt out in the statutes. The statutory authorities do not have any power if it is not so provided in the statutes. The first respondent is a creature of statutes. The power to allow an application for extension of the development order is derived from the provisions of s 24(2) of the Federal Territory (Planning) Act 1982 and must be exercised in conformity with the said provision. Under s 24(2) of the said Act, an application for extension of the development order must be made before the expiry of the development order. The development order that was granted by the first respondent to the second and third respondents in respect of the development of the said controlled premises was dated 14 February 1994 and was valid for a period of 12 months. It expired on 14 February 1995. But the application for extension of the development order by the second respondent and the third respondent was only made on 10 July 1996, that is more than 15 months after its expiry. Yet the first respondent granted the application for extension of the development order up to 14 February 1997, at its meeting on 3 September 1996. In my view the decision of the first respondent in granting the extension of the development order was contrary to the provisions of s 24(2) of the Federal Territory (Planning) Act 1982 and therefore was clearly unlawful. It had no authority to entertain any application for extension made after the expiry of the development order. As such the question of the first respondent exercising its discretion does not arise. A discretion can only be exercised if it has the authority. In this case, the first respondent is only allowed to exercise its discretion to grant or otherwise the extension of the development order under s 24(2) of the said Act if the application had been made during the validity of the said development order. However, since the application for extension was made after the expiry of the development order the first respondent did not have the power to consider the application at all.

The validity of the order of the first respondent under s 19(1) of the Control of Rent Act 1966 hinged on the validity of the development order

issued under s 22 of the Federal Territory (Planning) Act 1982 and any extension thereof granted under s 24(2) of the same Act. In the light of the fact that the development order dated 14 February 1994 had been unlawfully extended the order of the first respondent under s 19 of the Control of Rent Act 1966 made on 26 August 1997 was unlawful for want of compliance with the requirement of s 19(1)(a) of the said Act. The first respondent had clearly acted without authority when it issued the order under s 19 of the Control of Rent Act 1966 dated 20 August 1997, a ground which merits the decision of the first respondent to be set aside.

There is one preliminary issue raised by the respondent regarding locus standi of the applicant to bring this action. It was submitted by the respondent that any illegality of the order should be a matter of concern between Dewan Bandaraya Kuala Lumpur and the second respondent and the third respondent only. It should not concern the applicants at all. I am unable to agree with this submission. The applicants were the lawful tenants of the said controlled premises, and were about to be dispossessed of the premises because of the said order. It is of relevance and of great importance that the dispossession of their premises had been lawfully carried out by the first respondent. They were therefore an interested party. Hence, the order under s 19 of the Control of Rent Act 1966 issued by the first respondent had to be in full compliance with the requirements of s 19(1) of the said Act. As such they are entitled to bring this action if they believed that the order under s 19 of the Control of Rent Act 1966 issued by the first respondent was unlawful. I therefore held that the applicants have locus standi to bring this action.

In the light of the reasons as stated above I allowed the application with costs.

Application allowed.

Reported by Chris Lin